

1 KAREN P. HEWITT  
United States Attorney  
2 CHRISTOPHER S. STRAUSS  
Special Assistant U.S. Attorneys  
3 United States Attorney's Office  
880 Front Street, Room 6293  
4 San Diego, California 92101-8893

5 Attorneys for Plaintiff  
United States of America

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

1 )  
2 UNITED STATES OF AMERICA, ) Criminal Case No. 08CR0918-L  
3 ) Plaintiff,  
4 ) GOVERNMENT'S NOTICE OF INTENT TO  
5 v. ) INTRODUCE SUMMARIES OF  
6 FE S. GARRETT ) VOLUMINOUS EVIDENCE PURSUANT TO  
Defendant. ) FEDERAL RULE OF EVIDENCE 1006  
\_\_\_\_\_  
)

8 Plaintiff, United States of America, by and through its counsel Karen P. Hewitt, United  
9 States Attorney, and Christopher S. Strauss, Special Assistant United States Attorney, hereby  
20 submits its Notice of Intent to Introduce Summaries of Voluminous Evidence Pursuant to Federal  
21 Rule of Evidence 1006.

## MEMORANDUM OF LAW

23 The Government intends to offer summaries of voluminous evidence during the presentation  
24 of its case-in-chief at trial. These summaries are admissible under Fed. R. Evid. 1006:

The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at reasonable time and place. The court

1 may order that they be produced in court.

2 The proponent of a summary under Rule 1006 must establish the admissibility of the  
 3 underlying documents as a condition precedent to introduction of the summary. United States v.  
 4 Johnson, 594 F.2d 1253, 1257 (9th Cir. 1979). The proponent must also establish that the  
 5 underlying documents were made available to the opposing party for inspection. Paddack v. Dave  
 6 Christensen, Inc., 745 F.2d 1254, 1259 (9th Cir. 1984). Summaries must fairly represent the  
 7 underlying documents, and their admission into evidence is left to the trial court's discretion. David  
 8 & Cox v. Summa Corp., 751 F.2d 1507, 1516 (9th Cir. 1985). Although the underlying documents  
 9 must be admissible, the underlying documents need not be admitted into evidence. See United  
 10 States v. Wood, 943 F.2d 1048, 1053 (9th Cir. 1991) (holding that summaries are evidence when  
 11 admitted in lieu of underlying documents); United States v. Myers, 847 F.2d 1408, 1412 (9th Cir.  
 12 1988) (quoting Johnson, 594 F.2d at 1257 n.6).

13 The Ninth Circuit has repeatedly approved of the use of Rule 1006 summaries, particularly  
 14 where, as here, the summaries will aid the jury in organizing the information contained in a large  
 15 number of documents into understandable form. See, e.g., Goldberg v. United States, 789 F.2d  
 16 1341, 1343 (9th Cir. 1986) (testimony concerning summaries of voluminous tax records permitted);  
 17 United States v. Shirley, 884 F.2d 1130, 1133 (9th Cir. 1989) (summary charts of telephone calls  
 18 permitted to help jury organize and evaluate evidence); Keith v. Volpe, 858 F.2d 467, 479-80 (9th  
 19 Cir. 1988) (summaries necessary to clearly present relevant facts in government agency files); see  
 20 also United States v. Hazelwood, 40 Fed. Appx. 347, 350 (9th Cir. 2002) (unpublished).

21 Rule 1006 does not require that it be literally impossible for the jury to examine the  
 22 underlying records before a summary may be admitted. See Shirley, 884 F.2d at 1133; United States  
 23 v. Stephens, 779 F.2d 232, 238-39 (5th Cir. 1985); United States v. Scales, 594 F.2d 558, 562 (6th  
 24 Cir. 1979). Further, the fact that some of the underlying documents may be admitted into  
 25 evidence does not mean that they can be "conveniently examined in court." See Stephens, 779 F.2d  
 26 at 239.

Rule 1006 summaries are evidence in their own right rather than just demonstrative testimonial aids that summarize documents and testimony already admitted into evidence. Wood, 943 F.2d at 1043; United States v. Smyth, 556 F.2d 1179, 1184 (5th Cir. 1977).

## SUMMARIES IN THE INSTANT CASE

In this case, the Government intends to offer into evidence summaries of the deposits, withdrawals, and transfers into and out of twelve bank accounts used by the defendant from 2001 through 2006. A list of the bank accounts that will be summarized is attached as Exhibit A. The bank account records are voluminous, consisting of in excess of 3,800 pages of statements, deposit slips, and checks. Therefore, all of the bank records cannot be conveniently examined by the fact-finder in court. The underlying bank account records are admissible as business records pursuant to Fed. R. Evid. 803(6). See Hazelwood, 40 Fed. Appx. at 350 (noting that bank records are admissible pursuant to Rule 803(6) and are a "routine starting point" for a fraud investigation). The underlying bank records were provided in electronic form to the defendant in discovery on April 23, 2008.

15 The Government intends to introduce the summaries of the bank account records in lieu of  
16 introducing the underlying bank records. Accordingly, the summaries of the bank account records  
17 will themselves be the Government's trial evidence. See Wood, 943 F.2d at 1043. Draft versions of  
18 the summaries, in the form of spreadsheets, will be provided to the defense well in advance of trial  
19 and the final versions of the summaries will be provided shortly before the testimony of the  
20 Government's summary expert witness.

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CONCLUSION

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The Government's proposed summaries of voluminous evidence are based upon admissible evidence of which the defendant has been given notice and which has been provided to the defense. Copies of final versions of the summaries will be provided to the defendant as soon as they are completed. The Government intends to offer these summaries at trial and move for their admission into evidence during its case-in-chief, pursuant to Federal Rule of Evidence 1006.

DATED: July 31, 2008

9

/s/ Christopher S. Strauss

Christopher S. Strauss

Special Assistant United States Attorney

Attorney for Plaintiff

United States of America

Email: [Christopher.S.Strauss@usdoj.gov](mailto:Christopher.S.Strauss@usdoj.gov)

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Government's Notice of Intent to Introduce  
Summaries of Voluminous Evidence Pursuant to  
Federal Rule of Evidence 1006

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, ) Case No. 08CR0918-L  
Plaintiff, )  
v. )  
FE S. GARRETT, ) CERTIFICATE OF SE  
Defendant. )

## CERTIFICATE OF SERVICE

**IT IS HEREBY CERTIFIED THAT:**

I, Christopher S. Strauss, am a citizen of the United States and am at least eighteen years of age.

**My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.**

I am not a party to the above-entitled action.

I have caused service of GOVERNMENT'S NOTICE OF INTENT TO INTRODUCE  
SUMMARIES OF VOLUMINOUS EVIDENCE PURSUANT TO FEDERAL RULE OF EVIDENCE  
1006 on defendant FE S. GARRETT, pro se, by sending a copy of the motion via Federal Express on  
July 31, 2008 to defendant at the following address:

The Geo Group  
Reg. # 0799-0298  
Western Region Detention Facility  
220 West C Street  
San Diego, CA 92101

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2 I have caused service of GOVERNMENT'S NOTICE OF INTENT TO INTRODUCE  
3 SUMMARIES OF VOLUMINOUS EVIDENCE PURSUANT TO FEDERAL RULE OF EVIDENCE  
4 1006 on defendant's standby counsel by electronically filing the foregoing with the Clerk of the District  
5 Court using its ECF System, which electronically notifies them:

6

7 Erica Kristine Zunkel  
Federal Defenders of San Diego  
8 225 Broadway, Suite 900  
San Diego, CA 92101

[Erica\\_zunkel@fd.org](mailto:Erica_zunkel@fd.org)

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I declare under penalty of perjury that the foregoing is true and correct.

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Executed on July 31, 2008.

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/s/ Christopher S. Strauss  
CHRISTOPHER S. STRAUSS  
Special Assistant United States Attorney

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